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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-ninth session

SUMMARY RECORD OF THE 2nd MEETING

Held at the Palais des Nations, Geneva,
on Monday, 4 August 1997, at 3 p.m.

Chairman: Mr. BENGOA

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The meeting was called to order at 3.20 p.m.

ORGANIZATION OF WORK

(b) ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (continued) (E/CN.4/Sub.2/1997/1 and Add.1)

1. Mr. CHERNICHENKO said that item 11 (c), "Other new developments", should be supplemented. Pursuant to Sub-Commission decision 1996/116, he had prepared a working paper on recognition of gross and massive violations of human rights perpetrated on the orders of Governments or sanctioned by them as an international crime. It should be considered under that sub-item, which could be subdivided into: (c) (i) Violations of human rights by Governments, and (c) (ii) Human rights and arbitrary deprivation of nationality.

2. Mr. BOSSUYT referred first to the question raised at the previous meeting by Mr. Alfonso Martínez in connection with item 16 (b) of the 1996 session, namely "Prevention of discrimination and the protection of children: human rights and youth". The Sub-Commission had decided to take up that question only every two years and it was necessary to keep to that decision, which should contribute to the rationalization of the Sub-Commission's work. As to the wording of provisional agenda item 10 (b), it would be best to use the terminology employed in article 13 of the Universal Declaration of Human Rights, which stated that everyone had "the right to leave any country, including his own, and to return to his country". The proposal for a different formulation of the wording of item 11 should also be adopted. Again, item 13 should be divided into three sub-items instead of two. Lastly, the question of the implications of humanitarian activities for the enjoyment of human rights - item 19 of the 1996 session - should be included among the issues in item 11 (b) of the present session.

3. Mrs. GWANMESIA announced that she had completed the study on the administration of juvenile justice that she had been assigned to conduct. She therefore proposed that the question of juvenile justice should be considered under a new item 9 (c).

4. The CHAIRMAN said that account would be taken of that proposal and some thought would have to be given to the way in which it could be combined with the other suggestions made.

5. Mrs. WARZAZI said she endorsed the proposal by Mr. Alfonso Martínez to consider the question of the protection of children and youth at the present session. As to the question of traditional practices affecting the health of women and children, which she was assigned to study, in the actual title of the question and the study she would like the word "child" to be replaced by "girl child" in order to avoid any ambiguity. Moreover, she supported the proposal by Mrs. Daes to include a sub-item on the fiftieth anniversary of the Universal Declaration of Human Rights. She also thought that the question of disarmament should be considered under item 11 (b) (Review of issues not previously the subject of studies but which the Sub-Commission had decided to examine). Furthermore, she supported the idea of including the question of

the implications of humanitarian activities for the enjoyment of human rights and also proposed that item 4 (a) should be changed to: "The international economic order and the promotion of human rights, including the right to education".

6. Mr. EIDE, reverting to the question of the protection of children, said that he was not in favour of including it in the agenda. What contribution could be made in that field by the Sub-Commission in view of the extremely valuable work done by the Committee on the Rights of the Child? In addition, rationalization of the agenda should certainly enable members to work on the basis of a more coherent and more logical agenda, but should also allow them to have more time to speak on each item. He therefore endorsed the request by Mrs. Palley for members to be able to exceed, where necessary, the 20 minutes' speaking time allowed under guideline No. 16 of the guidelines the Sub-Commission had adopted at its forty-fourth session in connection with its methods of work.

7. Mr. ALI KHAN said that, at the previous meeting, Mr. Alfonso Martínez had made judicious remarks about the intrinsic merits of the proposed provisional agenda. Since the agenda should reflect the Sub-Commission's real concerns, the wording of item 8, for example, "Protection of minorities" should be expanded. In view of the Sub-Commission's debates on that topic since 1988, the studies by Mrs. Palley and Mr. Eide, the relevant work of the General Assembly in 1992 and Sub-Commission resolution 1993/43, reference should also be made to the struggle against discrimination and the item should be entitled: "Prevention of discrimination against and the protection of minorities". Admittedly, the issue of discrimination was already mentioned in item 11 (a) (ii), but it was in the limited context of religion and belief.

8. Mr. WEISSBRODT said that the new provisional agenda proposed was necessarily imperfect, and hence the value of the suggestions made by various experts, notably by Mr. Alfonso Martínez. But, like Mr. Eide - who had contributed a great deal to the preparation of the provisional agenda - he thought that the idea was to lay emphasis on discussions between experts rather than on statements and that it was not necessarily wise to include new major issues in the agenda. The question of the rights of the child, for example, to which Mr. Bossuyt had referred, could definitely find a place in the context of item 11 (b). Nor did it seem essential to refer in the agenda to all the individual studies already mentioned in the annotated agenda; otherwise, there would be a list of elements as in the old agenda. Some questions were indeed important, but the time had come to consider whether they should really be placed on the agenda. In the light of the proposals and the discussions, he suggested that the Bureau should prepare a modified draft agenda which could be submitted to the Sub-Commission at its next meeting.

9. Mrs. FORERO UCROS said that she endorsed the idea of an item on the question of the protection of children and adolescents, which seemed vital. Moreover, like Mrs. Warzazi, she felt that the problem of disarmament had a place on the agenda in the context of item 11 (b) (ii), more particularly when it was viewed from the angle of the consequences of the sale and illicit trafficking in arms on the human rights situation. In the region she came from, Latin America, those consequences were particularly marked.

10. Mr. EL-HAJJÉ said that the agenda certainly was not perfect, as Mr. Weissbrodt had said, but that should encourage the Sub-Commission to go further. He was concerned about the translation of some items on the provisional agenda, particularly item 3 (b), where the term "Xenophobia" had been translated into Arabic by an expression that meant "Terrorism against foreigners". The various language versions should therefore be brought into line with one another.

11. Again, human rights were unquestionably indivisible, but the presentation of the items on the agenda should be rationalized. Was it logical, for instance, to include the question of the situation of migrant workers and the members of their families under item 3, which related specifically to the elimination of racial discrimination? Would it not be possible to make things more coherent in the case of the right to development, which appeared in both item 4 (b) and item 5 (b), since the various aspects were interrelated? The question of humanitarian law, mentioned by Mr. Bossuyt and then by Mrs. Warzazi, could well be tied in with the question of freedom of movement, the subject of item 10. Lastly, the problem of discrimination against minorities, which Mr. Ali Khan suggested should be expressly mentioned in item 8, overlapped with item 11 (a) (ii). Nevertheless, the wording of the proposed provisional agenda seemed acceptable.

12. Mr. ALFONSO MARTÍNEZ said that, like Mrs. Palley, he thought that grouping old and new topics in the agenda might well pose a problem of time. It should be remembered that there was no real rule on the number of minutes to be allotted for the consideration of the various questions and that, in 1992, a recommendation had simply been made in that regard. He was convinced that the Bureau would, in organizing the work of the session, take account of the fact that three or four topics were now combined under a single item.

13. Again, in regard to the comments by Mr. Bossuyt, he would point out that the Sub-Commission had not taken any decision on considering a particular item every two years and that paragraph 11 of the annotated agenda (E/CN.4/Sub.2/1997/1/Add.1) simply referred to the Chairman's suggestions in that connection. Any misunderstanding should therefore be cleared up and a possible decision on considering certain items every two years first required more thorough consideration, as Mr. Joinet had argued. He was not opposed in principle to the idea that the Bureau should make proposals in that regard, as Mr. Weissbrodt had suggested. Nevertheless, inasmuch as new proposals had been made, it would be advisable for further consultations to be held on two issues, namely the content of the agenda and the consideration of certain items every two years, which were crucial for the Sub-Commission's future work.

14. A decision would also have to be taken on whether the question of the protection of children and their rights should form a separate item. Since the agenda would consist of only 13 or 14 items instead of 20, the question could certainly be envisaged. Lastly, he suggested that the Bureau should make proposals at the following meeting with regard to the agenda and the programme of work, in view of the fact that, since some items were grouped together, the speaking time could not be confined to the usual 10 to 15 minutes.

15. The CHAIRMAN said that agreement seemed to be emerging on the provisional agenda, except for the idea of inserting between items 5 and 6 a new item on the protection of children (boys and girls) and juveniles, as well as their rights.

16. Mrs. PALLEY said she could not support the proposed provisional agenda until it was made clear which item would be used to decide on future studies. It was also suggested in the annotated provisional agenda that the question of the privatization of prisons should be considered every two years. In view of the highly alarming overcrowding in prisons and the prison privatization plans mentioned by the Minister in charge of prisons in a well-known country, the question definitely deserved to appear on the Sub-Commission's agenda.

17. The CHAIRMAN pointed out to Mrs. Palley that the question of the Sub-Commission's future work would be dealt with under item 13 and privatization of prisons need not form a separate item, since it already fell within item 9.

18. Mr. JOINET said that the question of the administration of juvenile justice, like that of privatization of prisons, already appeared in the agenda of the sessional Working Group. The Group was, moreover, open to all those who had suggestions to make on those issues, which had in actual fact been pending for a long time. The topic had been the subject of, more particularly, an international seminar organized on the recommendation of the Sub-Commission's Special Rapporteur on human rights and youth, Mr. Mazilu, and was one of the core activities undertaken by other bodies, including UNICEF.

19. Noting that, of the five questions proposed for consideration on a two-yearly basis, three appeared on the agenda for the present session and two were postponed to the next session, he suggested that the Sub-Commission should proceed to adopt the provisional agenda and discuss the programme of work for the present session, deferring until next year a final decision on the questions that were to be taken up every two years.

20. Mr. ALFONSO MARTÍNEZ said he feared that there might be some confusion and explained that the topic he wanted to include on the agenda, namely the rights of the person in connection with children and juveniles, was quite separate from that of juvenile detainees, which was the subject of item 9 (b) and would actually be considered by the sessional Working Group. In addition, he supported the wording proposed by Mr. Ali Khan for the item concerning minorities.

21. Mrs. WARZAZI said the problem was straightforward: proposals to supplement an item on the provisional agenda by mentioning, for instance, the right to education, protection of minorities or disarmament, should be adopted automatically if they did not meet with any objections. On the other hand, the Sub-Commission should decide whether or not it was worth adding to the agenda new topics, such as the implications for human rights of humanitarian actions - which should not be confused with humanitarian law properly speaking - and promotion and protection of the rights of children and juveniles.

22. Mr. GUISSÉ said it was surprising that the proposals concerning the agenda published in the report on the 1996 session had not been reproduced in full, thus forcing the Sub-Commission to revert to a question already discussed at length last year. That was true, for example, of the administration of juvenile justice, a question which had been proposed for the agenda and which was to form the subject of a report. Such vacillations ran counter to the aim of rationalizing the Sub-Commission's work. However, he would propose the addition under item 9 (b) of a sub-item on the judicial protection of children, a topic which differed from that of child detainees and which had aroused great interest in 1996 in connection with the cases of paedophilia.

23. Mr. JOINET said that the 1996 report had contained proposals intended to guide the Chairman in preparing the agenda and it was normal to devote some time to devising an agenda that would orient the Sub-Commission's work for a number of years. Nevertheless, to facilitate a consensus, he was in favour of including a broader item on the promotion and protection of the rights of minors, provided the work was done, in accordance with established practice, in the context of an update of the report prepared by the Special Rapporteur on human rights and youth.

24. Mr. MEHEDI said he did not agree with the idea of including the right to education in the agenda. Since the adoption of the Universal Declaration of Human Rights, in 1948, it seemed that everything had been said on the matter, which the UNESCO Executive Board also dealt with in an excellent fashion. He therefore proposed that the Sub-Commission should consider the subject of human rights education, which was more topical, particularly in the context of the United Nations Decade for Human Rights Education. Similarly, the question of cultural rights was still a largely unexplored field, particularly in the context of indivisibility and universality of human rights.

26. Mr. JOINET said that consideration of the draft resolutions under item 2 required more time than did the others and he asked the Bureau to bear that in mind when it decided on the time limit for depositing such drafts. Moreover, the rules on speaking time caused difficulties inasmuch as not all speakers would probably have time to put their names down to speak under item 2, which was to be taken up at the next meeting.

27. Mr. WEISSBRODT said he endorsed that comment and advised NGOs wishing to speak under item 2 to put their names down without further delay.

28. The CHAIRMAN said the Bureau would endeavour to guarantee everyone's right to speak.

29. Mrs. IZE-CHARRIN (Secretariat) provided information on the documents for the session.

30. The CHAIRMAN said that the Bureau would be meeting to draw up a plan of work and consolidate the proposals made during the meeting to improve the agenda.

The meeting rose at 4.50 p.m.